IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

Habeas Corpus Petition No.618 of 2007

Dhanalakshmi .. Petitioner

Vs

1. The Commissioner of Police
   Tiruchirappalli City
   Tiruchirappalli.

2. State, rep. by the
   Chief Secretary to Govt. of Tamilnadu
   Public (Law and Order) Department
   Fort St. George, Chennai 600009.

3. The Secretary to Govt. of India
   Ministry of Home Affairs
   (Department of Internal Security)
   North Block, New Delhi 110 001. .. Respondents

Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus as stated therein.

For Petitioner : Mr.Veerakathiravan

For Respondents-1&2 : Mr.N.R.Elango
Additional Public Prosecutor
Mr.Y.Bhuvanesh Kumar
SCGSC-R3

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O R D E R

(Order of the Court was made by P.D.DINAKARAN,J.)

The order of detention dated 4.4.2007 passed by the first respondent herein in CPO/TC/IS/NSA/D.O.No.7/2007 against one Raju, son of Palani @ Palani Chettiyar, in exercise of the powers conferred under sub Section (2) of Section 3 of the National Security Act, 1980 (Central Act 65 of 1980) read with the orders issued by the Government in G.O.Ms.No.73 Public (Law and Order-F) Department dated 11.1.2007 under sub-section (3) of Section 3 of the said Act, is being challenged in this petition by the wife of the said Raju, seeking to issue writ of habeas corpus calling for the records in connection with the detention order made in CPO/TC/IS/NSA/D.O.No.7/2007 dated 4.4.2007 and to quash the same and to direct the respondents to produce the detenu Raju, now detained in Central Prison, Tiruchirapalli and set him at liberty.

2.1. The ground case, on the basis of which the detaining authority viz., the Commissioner of Police, Tiruchirappalli City, passed the impugned detention order, is that one Arulseelan was found in a suspicious manner and a sum of Rs.10 lakh was recovered. He could not account for possession of such amount, nor he could account for his presence at the place in the early morning and also he failed to produce valid document. Thereafter, he was arrested and his confession statement was recorded. In the confession, he stated that one Ragulan @ Antony, a known LTTE Cadre, procuring and smuggling explosive materials and other essential commodities from the soil of India to Srilanka, had given him the money with an instruction to hand over the same to a person in Madurai for procuring iron balls (for being used to make explosives and bombs). The said Arulseelan further confessed that he had already given Rs.10 lakhs on a previous occasion to a person in Madurai as instructed by Ragulan @ Antony, to procure iron balls for LTTE, though he was aware that the organisation was banned in India. Later, it was known that the amount of Rs.10 lakh was brought by one of the accused Pradheepan @ Thillai @ Dheepan, who received the amount from another accused Idayathullah of Chennai and handed over to Ragulan @ Antony at the house of Arulseelan.

2.2. A case was registered in Crime No.1 of 2007 under Section 102 Cr.P.C., Section 120-B I.P.C., Sections 10 and 13(1)(2) of Unlawful Activities (Prevention) Act, 1967, Section 14 of the Foreigners Act and Section 5 of the Explosive Substances Act. Thereafter, the accused Arulseelan, after being produced, was remanded by the Magistrate. During investigation, accused Regulan @ Antony was arrested on 7.3.2007 and remanded to judicial custody. On the basis of his voluntary confession statement, police party

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proceeded to Perambalur and recovered 4.5 tonnes of iron balls meant for despatch to LTTE, a banned outfit in India, and arrested his associates Pradheepan @ Dheepan @ Thillai and Bakeerathan, both of them are LTTE cadres and Idayathullah of Chennai on 7.3.2007. In his confession, Ragulan @ Antony further confessed that he illegally ferried explosive materials to Srilanka in the year 2004 with the help of one Raju. During investigation, the said Raju, the detenu herein, was arrested on 8.3.2007 and remanded to judicial custody.

2.3. The other recitals in the grounds of detention indicate the procurement of iron balls, stocking of such materials in some places and sending those materials to Sri Lanka. On the basis of these facts, the detaining authority has concluded:

> "10. Hence, I am satisfied from the materials placed before me in the above case that the accused Raju has knowingly helped the LTTE, a banned organisation in India, for procuring materials and smuggling them to Srilanka clandestinely and thereby acted in a manner prejudicial to the security of the State, the relations of India with foreign country and maintenance of public order.
>
> 11. Investigation reveals that the iron balls seized from the accused in this case are used for making bombs by the LTTE. Illicit transportation of such materials and possession in the hands of such anti-national elements will really pose threat to the security of the State and also the maintenance of the public order.

2.4. The detaining authority, the first respondent herein, taking note of the above ground case and having satisfied that the activities of the said Raju are prejudicial to the security of the State, the relations of India with foreign country and maintenance of public order and that there is compelling necessity to detain him under Section 3(2) of the National Security Act 1980 (Central Act 65 of 1980) (hereinafter referred to as 'the Act') in order to prevent him from indulging in such further activities in future which are prejudicial to the security of the State, the relations of India with foreign country and maintenance of public order, ordered his detention.

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3. The learned counsel appearing for the petitioner, inviting our attention to the order of detention, which has been passed by the Commissioner of Police under Section 3(3) of the Act, contends that the impugned order of detention was passed on the ground that the detenu had acted in a manner prejudicial to the security of the State, the relations of India with foreign country and maintenance of public order. The act of prejudicial to the relations of India

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with foreign country attracts Section 3(1) of the Act, but not Section 3(2) or 3(3) of the Act. It is argued that as per Section 3 of the Act, the power to detain the detenu from acting in a manner prejudicial to the relationship of India with a foreign country, under the Act, is vested only with the Central Government or the State Government under Section 3(1) and (2) of the Act, but not with the detaining authority, viz., the Commissioner of Police, as the Commissioner of Police has not been delegated with such power to deal with matters coming within the scope of Section 3(1) of the Act.

4. At this juncture, it would be apposite to refer Section 3 of the Act, which reads as under.

> 3. Power to make orders detaining certain persons:- (1) The Central Government or the State Government may:-
>
> (a) if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the defence of India, the relations of India with foreign powers, of the security of India, or
>
> (b) if satisfied with respect to any foreigner that with a view to regulating his continued presence in India or with a view to making arrangements for his expulsion from India,
>
> it is necessary so to do, make an order directing that such person be detained.
>
> 2) The Central Government or the State Government may, if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the security of the State or from acting in any manner prejudicial to the maintenance of public order or from acting in any manner prejudicial to the maintenance of supplies and services essential to the community it is necessary so to do, make an order directing that such person be detained.
>
> ...
>
> (3) If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the State Government is satisfied that it is necessary so to do, it may, by order in writing, direct, that during such period as may be specified in the order, such District Magistrate or Commissioner of Police may also, if satisfied as provided in sub-section (2), exercise the powers conferred by the said section:

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Provided that the period specified in an order made by the State Government under this sub-section shall not, in the first instance, exceed three months, but the State Government may, if satisfied as aforesaid that it is necessary so to do, amend such order to extend such period from time to time by any period not exceeding three months at any one time."

5. On perusal of the entire materials placed before us, we find some force in the contention raised by the learned counsel for the petitioner. The materials relied on by the detaining authority would show that the detenu had acted in a manner prejudicial to the security of the State, the relations of India with foreign country and maintenance of public order, which would attract only Section 3 (1) of the Act, empowering the Central or State Government to pass detention order in cases where the detenu acts in a manner prejudicial to the relations of India with the foreign countries, inasmuch as the same is not governed under Section 3(2) and 3(3) of the Act.

6. It is settled law that in the matter of passing detention orders, unless the power is specifically provided under the statute, the authorities cannot pass an order of detention, as otherwise, it would offend Articles 21 and 22 of the Constitution of India. We are, therefore, satisfied that the impugned order of detention dated 4.4.2007 lacks jurisdiction.

7. That apart, even with regard to the ground that the detenu had acted in a manner prejudicial to the maintenance of the public order for having knowingly helped the LTTE, a banned organisation in India, for procuring materials and smuggling them to Srilanka clandestinely, in our considered opinion, such assistance by the detenu to the LTTE, a banned organisation, for illicit transportation of the iron balls used for bombs, by itself, would not amount to an act prejudicial to the maintenance of the public order, nor would amount to pose threat to the security of the State as long as they are not used in India. Therefore, both the grounds relied on by the detaining authority for passing the impugned detention order fail.

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8. Our view is fortified with the decision of a Division Bench of this Court in Thangavadivel vs. Government of Tamil Nadu (1992 L.W. (Crl.) 43).

9. The Madurai Bench of Madras High Court has also taken the same view in respect of the similarly placed detenu in H.C.P. (MD) No.263 of 2007, dated 14.9.2007 (Bhakeerathan @ Eelavan v. State of Tamil Nadu, rep. by its Secretary to Government, Public (Law & Order-F) Department, Chennai-9 and two others).

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10. In view of the above, the order of detention dated 4.4.2007 is set aside and the habeas corpus petition is allowed. The detenu, Raju, is directed to be released forthwith unless his presence is required in connection with any other case.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

ATR

To

1. The Commissioner of Police
   Tiruchirappalli City
   Tiruchirappalli.

2. The Chief Secretary to Govt. of Tamilnadu
   Public (Law and Order) Department
   Fort St. George, Chennai 600009.

3. The Secretary to Govt. of India
   Ministry of Home Affairs
   (Department of Internal Security)
   North Block, New Delhi 110 001.

4. The Superintendent
   Central Prison
   Tiruchirappalli.

5. The Public Prosecutor
   High Court, Madras.

1 cc to Mr.Y. Bhuvanesh Kumar, SCGSC, Sr. 68805
1 cc to Mr. Veera Kathiravan, Advocate, Sr. 68130

H.C.P.No.618 of 2007

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